United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 15-0383**
	)	**Issued: July 1, 2015**
DEPARTMENT OF HEALTH & HUMAN SERVICES, FOOD & DRUG ADMINISTRATION, Jamaica, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2014 appellant, through counsel, filed a timely appeal from a November 7, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he has more than one percent impairment of his left upper extremity for which he received a schedule award.

On appeal, appellant, through counsel, contends that he has established a schedule award for 25 percent impairment of his left upper extremity based on the report of his treating physician.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 25, 2011 appellant, then a 67-year-old microbiologist, filed a traumatic injury claim alleging that on April 20, 2011 he tripped and fell and dislocated his forearm bones and fractured his elbow joint. A closed treatment of the left elbow was performed on the date of injury. On November 21, 2011 OWCP accepted appellant's claim for dislocation of elbow and fracture of coronoid process of elbow.

On May 14, 2013 appellant filed a claim for a schedule award. In support thereof, he submitted reports dated August 29 and September 21, 2012, wherein Dr. Nader Paksima, an osteopath and chief of Orthopedic Surgery at Jamaica Hospital Medical Center, noted that he treated appellant with a closed reduction of the elbow fracture dislocation and then closed treatment of this injury with follow-up x-rays, physical therapy, and monitoring. Dr. Paksima noted that he last saw appellant on August 29, 2012 at which time he noted range of motion to the left elbow from 20 to 135 degrees which lacked 20 degrees of extension. He indicated that appellant's ulnar collateral ligament showed approximately 10 to 15 degrees of laxity. Dr. Paksima noted that the radial collateral ligament was intact, that there was crepitus to palpatation along the joint, that muscle strength was 5/5 for biceps and triceps, and that his nerve examination was intact. He further noted that x-rays showed loss of medial-sided joint space as well as loss of joint space on the lateral side, osteophyte formation and loose bodies around the elbow, and periarticular calcifications. Dr. Paksima opined that appellant was at maximum medical improvement. He noted that, based on Table 15-4, pages 399-400 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009), appellant had a class 2, grade D level of impairment with regard to his collateral ligament injury and a class 1, grade D level of impairment with regard to his elbow dislocation and class 1, grade D level of impairment with regard to the coronoid fracture, and a class 1, grade D impairment with regard to loose bodies or osteochondral lesions. Dr. Paksima stated that in reaching this conclusion he followed instructions given on page 383 through 390 and the instructions in section 15.3 of the A.M.A., *Guides.*

In a February 19, 2013 addendum, Dr. Paksima opined that, pursuant to the sixth edition of the A.M.A., *Guides*, appellant had a class 2, grade D degree of impairment, which corresponded to 25 percent loss of use of the left upper extremity.

On June 20, 2013 OWCP referred the case to an OWCP medical adviser. In a response of the same date, the medical adviser stated that he needed an addendum showing how Dr. Paksima arrived at the 25 percent figure.

By letter to Dr. Paksima dated October 10, 2013, OWCP requested a supplemental report requesting specific information with regard to how he arrived at his conclusion that appellant had 25 percent impairment of the left upper extremity. It advised Dr. Paksima that the report should include step-by-step calculations noting exact pages and tables. OWCP advised that grade modifiers should be used and an explanation provided with regard to net modifiers and the adjustment formula.

In a December 12, 2013 letter, Dr. Paksima stated that appellant had a class 2, grade D degree of impairment. He stated that, while there was a range given for the class 2 degree of

impairment, the subgrading system of letter D pertains to the severity of his impairment, which is why he picked 25 percent loss of use of the left upper extremity. Dr. Paksima referred to his prior report of August 29, 2012.

On March 12, 2014 OWCP asked its medical adviser to review appellant's claim. In a March 19, 2014 response, the medical adviser contended that Dr. Paksima's report made no sense and that he did not believe that Dr. Paksima was familiar with the methodology of the sixth edition of the A.M.A., *Guides*. He noted that to properly apply the sixth edition of the A.M.A., *Guides,* one must pick one major diagnosis for a particular joint and use only one method that gives the highest value. The medical adviser also noted that one does not pick grade D arbitrarily, but must choose a class and then one can modify the class by using the net modifier adjustment formula. He recommended obtaining a second opinion by an orthopedic surgeon familiar with the sixth edition of the A.M.A., *Guides.*

On June 20, 2014 OWCP referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion. In a July 11, 2014 report, Dr. Askin opined that appellant had reached maximum medical improvement with regard to his employment injury. He noted that appellant's diagnosis was coronoid process fracture with subluxation or dislocation of the elbow that had been treated. With regard to objective findings, Dr. Askin noted that appellant may have had some limitation of motion early on, but that his two elbows now have equal motion. He then applied the sixth edition of the A.M.A., *Guides* to determine appellant's permanent impairment. Dr. Askin indicated that, with respect to analysis on the basis of loss of motion, none was relevant at the present time because appellant does have equivalent motion for both flexion and extension of the elbow, and pronation and supination of the forearm. Regarding the fracture itself, he stated that, pursuant to Table 15-4 on page 399, the residual symptoms pertaining to the elbow itself were minimal, so based on the fracture, appellant would have a class 1 Class of Diagnosis with a default consideration of three percent impairment of the upper extremity. As per Table 15-7 on page 406 of the A.M.A., *Guides*, the Functional History grade modifier (GMFH) would be zero, as appellant is able to exercise regularly. As per Table 15-8 on page 408 of the A.M.A., *Guides,* Dr. Askin indicated that the Physical Examination grade modifier (GMPE) would also be zero as there is symmetry to the opposite side. As per Table 15-9 on page 410 of the A.M.A., *Guides*, the Clinical Studies grade modifier (GMCS) would be one as the studies confirmed the diagnosis, but the claimant had an excellent outcome. Dr. Askin then used the net adjustment formula on page 411 of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) and found (0-1) + (0-1) + (1-1) = -2. He then found that the net adjustment of -2 translated to a grade A impairment and a final one percent impairment rating. Dr. Askin noted that he was not provided with any documentation that there was arthritic change secondary to injury. He also noted that he was provided with Dr. Paksima's calculation of February 19, 2013 suggesting 25 percent loss of use of the upper extremity, but that he was not provided with clinical documentation that corroborates that calculation.

OWCP referred the case to a new OWCP medical adviser, and in a report dated October 21, 2014, the medical adviser agreed with the report of Dr. Askin, and opined that appellant had one percent impairment of the left upper extremity.

By decision dated November 7, 2014, OWCP issued a schedule award for one percent impairment of the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing regulations[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[4] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] For impairment ratings calculated on or after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition.[6]

The sixth edition requires identifying the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.[7] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[8]

ANALYSIS

OWCP accepted appellant's claim for a dislocation of his left elbow and a fracture of the coronoid process of his left elbow. Appellant filed a claim for a schedule award on May 14, 2013.

In support of his claim for a schedule award, appellant submitted reports by his treating osteopath, Dr. Paksima, who found that appellant had 25 percent impairment of the left upper extremity pursuant to the A.M.A., *Guides.* Dr. Paksima explained his conclusion only by general references to Table 15-4 at pages 399 to 400 of the A.M.A., *Guides* and pages 383 through 390 and section 15.3 of the A.M.A., *Guides*. He did not sufficiently explain how he arrived at his rating. OWCP, at the advice of its medical adviser, asked Dr. Paksima for a supplemental report. In a December 12, 2013 addendum, Dr. Paksima again indicated that appellant had a class 2 grade D degree of impairment and 25 percent impairment of his left upper extremity. However, he did not apply the formula as set forth in the A.M.A., *Guides,* did not explain how he applied

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id.*

[5] *See id.; Jacqueline S. Harris*, 54 ECAB 139 (2002).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013).

[7] A.M.A., *Guides* 494-531.

[8] *Id.* at 521.

the grade modifiers to reach a grade D degree of impairment, did not provide mathematical calculations indicating how he calculated the 25 percent impairment, or sufficiently explain his calculations pursuant to the A.M.A., *Guides.* As such, his report was properly found to be of diminished probative value.

At the suggestion of OWCP's medical adviser, it referred appellant to Dr. Askin for a second opinion. Dr. Askin concluded that appellant had one percent impairment of his left upper extremity. He thoroughly explained his rating process. Dr. Askin noted that, pursuant to Table 15-4 on page 399 of the A.M.A., *Guides*, appellant had a class 1 diagnosis based on his fracture with minimal residual symptoms. He then applied the grade modifiers of zero for functional history, zero for physical examination and one for clinical studies. Applying the formula as set forth in the A.M.A., *Guides*, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), he calculated (0-1) + (0-1) + (1-1) = -2. Dr. Askin then moved the grade calculation to the left two spaces and found that appellant had one percent impairment of the left upper extremity. The medical adviser agreed with Dr. Askin's calculations.

As Dr. Paksima did not properly apply the rating criteria of the A.M.A., *Guides*, OWCP properly relied on the reports of the second opinion physician, Dr. Askin, as well as the medical adviser. Dr. Askin and the medical adviser properly applied the appropriate sections of the A.M.A., *Guides*, calculated the proper diagnosis class, and applied correct grade modifiers. Both physicians provided a detailed discussion of how each element of the rating scheme related to appellant's impairment. Therefore, OWCP decision finding one percent impairment of the left upper extremity was proper under the facts and circumstances of this case. There is no probative medical evidence establishing a greater degree of impairment.[9]

Appellant may request a schedule award or increased schedule award regarding the left upper extremity at any time, based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established that he has more than one percent impairment of his left upper extremity for which he received a schedule award.

[9] *See W.S.*, Docket No. 14-1184 (issued January 8, 2015).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2014 is affirmed.

Issued: July 1, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board